



Law Department
Dana W Roper, City Attorney
575 South 10th Street
Suite 4201
Lincoln, Nebraska 68508
402-441-7281
Civil fax:
402-441-8812
Pros fax
402-441-8813

Ernest A. (Rich) Poe III, Chief Assistant
Richard E. Anderson, Police Legal Advisor
Civil Division
James D. Fannon
Steven J. Huggenberger
Joel D. Pedersen
Connor L. Reuter
Margaret M. Blatchford
Tonya L. Skinner
Joe J. Rupp
John C. McQuinn II, Chief Prosecutor
Prosecution Division
Patrick A. Campbell
Christine A. Loseke
Rob E. Caples
Marcee A. Brownlee
Jessica Kerkhofs

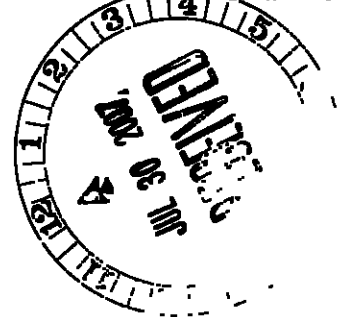
LINCOLN
The Community of Opportunity

MAYOR COLEEN J. SENG

lincoln.ne.gov

July 23, 2007

219871



Hon Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re Finance Docket No. 34915, *Lincoln Lumber Company - Petition for Declaratory Order- Condemnation of Railroad Right of Way for Storm Sewer*

Dear Secretary Williams:

This is to notify the Board of a recent decision in the District Court of Lancaster County, Nebraska regarding the above referenced matter. The District Court has denied Lincoln Lumber Company's motion for a preliminary injunction and denied Lincoln Lumber Company's request to stay proceedings pending a ruling by the Surface Transportation Board. The District Court found that the City of Lincoln's storm sewer is unlikely to interfere with railroad operations or pose safety risks. Enclosed is a copy of the District Court's Order. Therefore, the Board is respectfully requested to not initiate a proceeding in the above referenced matter. A review by the Surface Transportation Board is not necessary. The District Court has determined that the City of Lincoln's storm sewer construction may proceed.

If you have any questions concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely,

ENTERED
Office of Proceedings

JUL 30 2007

Part of
Public Record

Joseph Rupp
Assistant City Attorney

ENTERED
Office of Proceedings

JUL 30 2007

Part of
Public Record

cc. Lincoln Lumber Company, P.O. Box 30373, Station A, Lincoln, NE 68503.
Thomas Ostidick, 13220 California Street, Suite 400, Omaha, NE 68154.
Thomas McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CITY OF LINCOLN,

PLAINTIFF,

vs.

**LINCOLN LUMBER COMPANY,
a Nebraska corporation; and**

DEFENDANT.

)
)
)
)
)
)
)
)
)
)

CASE NO. CI06-3821

ORDER

The Motion for Preliminary Injunction and Motion to Stay Proceedings Pending Ruling by the Surface Transportation Board came on for hearing on May 18, 2007. Joseph J. Rupp appeared for the City, Thomas Ostdiek appeared for Lincoln Lumber Company.

Evidence was adduced, briefs were submitted, the Court finds and orders as follows:

Lincoln Lumber Company asked for a Temporary Injunction to prevent the Plaintiff, the City of Lincoln, from entering Lincoln Lumber Company's property for purposes of constructing a storm sewer on or under the property until a final decision is reached on LLC's federal preemption defense to the condemnation of a storm sewer easement across LLC's property. The question as to whether the action could be transferred to federal court and the actual acquisition would be preempted under 49 U.S.C. § 10501 (b). That issue was decided when the Eighth Circuit Court of Appeals remanded the case back to County Court for further proceeding.

It does not appear that the City storm sewer will interfere with railroad operations or pose safety risks. As has been pointed out there is already a storm sewer on Lincoln Lumber


Company's property. The City's project will replace the existing storm sewer.

Lancaster County Court has determined that review by the Surface Transportation Board is not necessary. The City storm sewer being underground will not cause irreparable damage to the above ground railroad operation. It is unlikely that the Board would find that the storm sewer is federally preempted. If it were then Lincoln Lumber would be entitled to monetary damages.

The Court therefore finds that the condemnee, Lincoln Lumber Company, is not entitled to a preliminary injunction or an order to stay the proceedings pending a ruling by the Surface Transportation Board. The Motion is therefore denied.

Entered this 18 day of July, 2007.

BY THE COURT:



Earl J. Witthoff
District Judge

cc: Joseph Rupp
Thomas Ostdiek